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Air Resources Board

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Gray Davis
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March 10, 1999

Air and Radiation Docket and Information Center (6102)
Attention Docket Number A-97-29
Room M-1500
United States Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

Dear Sir or Madam:

Over the last several years, California state and local air pollution control agencies, environmental groups, and industry representatives have been working closely with the United States Environmental Protection Agency (U.S. EPA) to seek ways to integrate the federal hazardous air pollutants program into California's air pollution control program. During this period, we have collectively spent considerable time and resources exploring ways to effectively integrate the two programs. We appreciate the effort that the U.S. EPA has put forth in addressing this issue and are pleased to have the opportunity to comment on the proposed amendments to the "Approval of State Programs and Delegation of Federal Authorities," [40 Code of Federal Regulations (CFR), Part 63, Subpart E (Subpart E Amendments)]. Our detailed comments are presented in Enclosure 1.

We believe that it is important to the future environmental and economic well-being of California to ensure that we have an efficient and effective process for approving alternatives to federal requirements. Subpart E must be designed to eliminate duplicate regulatory requirements, provide for efficient and effective use of limited resources, retain the environmental benefits of both the federal and California programs, and provide California the ability to maintain a more comprehensive and stringent criteria and toxic air pollution control program.

The proposed Subpart E Amendments are an integral part of the policy and regulatory changes that must be implemented to successfully resolve equivalency issues. We appreciate the regulatory amendments that are being proposed to Subpart E. However, there remains a number of issues that must be addressed in the Subpart E amendments if we are to have a fully functional equivalency process. In particular, we believe that a number of the more critical issues can be resolved by making the following changes to the Subpart E amendments:

- support and encourage Regional Offices' participation in state and local agency rulemaking prior to submittal of an equivalency request;

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- empower the Regional Offices with broader authority to enter into agreements with state and local agencies to implement the equivalency program in the most effective and efficient manner;
- provide for the expeditious and timely approval of new source review decisions;
- provide for the expeditious and timely approval of minor, nonsubstantive changes;
- delegate the authority to state and local agencies to make site-specific day-to-day management decisions related to recordkeeping and reporting;
- differentiate between work practice standards and work practice requirements and provide different criteria for approval;
- enhance the equivalency-by-permit option by allowing the use of district operating permits;
- enhance the state program approval option by allowing all equivalency options, including the equivalency-by-permit option for both major and area sources;
- eliminate the restriction on the number of sources within a source category that can use the equivalency-by-permit option, or delegate the authority to the Regional Offices to negotiate with the state or local agency on the number of affected sources that can be included in the equivalency-by-permit option;
- recognize and accommodate risk-based program elements, including the identification of toxic air contaminants, determination of health risk values, development and use of site-specific risk assessments, and implementation of risk reduction programs; and
- simplify and streamline the overall submittal and approval process.

We are optimistic that a satisfactory resolution to these critical issues, as well as the issues raised in Enclosure 1, will eliminate the regulatory obstacles to a fully functional equivalency process. We are committed to continuing to work with the U.S. EPA to seek an acceptable resolution and look forward to your response to these comments.

Thank you again for the opportunity to submit comments. If you have any questions, please call Mr. Dan Donohoue, at (916) 322-8277.

Sincerely,



Robert D. Fletcher, Chief
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Enclosure

cc: See next page.

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cc: Mr. Dan Donohoue, Manager
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ENCLOSURE 1

Air Resources Board Comments on the Proposed Amendments to 40 CFR Part 63, Subpart E March 10, 1999

I. General Comments

1. Empower the U.S. EPA Regional Offices to implement the program.

The U.S. EPA Regional Offices are responsible for implementing NESHAPs and administering the Subpart E program. Therefore, we recommend that the U.S. EPA establish provisions throughout Subpart E that would empower the U.S. EPA Regional Offices to enter into agreements with a state or local (S/L) agency to establish an alternative equivalency process to the specific processes identified in Subpart E. The criteria for approval should be consistent with the framework established in Subpart E, but the specific process and approval timeframes could be different to allow for more effective and efficient integration of the S/L program with the U.S. EPA Regional Office program and the more effective and efficient use of limited U.S. EPA and S/L agency resources.

2. Incorporate provisions to address new source review decisions.

Subpart E does not recognize decisions made pursuant to S/L agency criteria or toxic new source review rules or policies, even if those decisions result in more stringent emission control requirements and associated monitoring, recordkeeping, and reporting. Currently, U.S. EPA approval and *Federal Register* publication are required prior to implementing emission control requirements on a case-by-case basis or a source category basis for any technology or requirement that differs from those identified in the NESHAP.¹ This is a significant obstacle to the implementation of more effective toxic control requirements.

We recommend that the U.S. EPA provide a simple and expeditious process for recognizing more stringent emission control requirements and associated monitoring, recordkeeping, and reporting requirements resulting from S/L new source review rules and requirements.

3. Incorporate provisions to eliminate duplicate requirements for sources upon NESHAP promulgation.

The NESHAPs require compliance for new sources (sources constructed after the proposal date of the NESHAP) upon promulgation of the NESHAP. This can result in

¹ See 40 CFR Part 63, Subpart A, section 63.6(g) and 40 CFR Part 63, Subpart E, sections 63.92(a), 63.93(a)(2), and 63.94(e), 63.97(c)(4). In addition, the U.S. EPA must approve a Part 70 permit under 63.94(c).

sources constructed two to three years prior to promulgation of the final NESHAP having to comply with new requirements immediately upon promulgation. In California, these sources have already been subjected to S/L requirements and are faced with the prospect of duplicate requirements immediately upon promulgation of the NESHAP. Due to the nature of Subpart E, it is impossible to obtain an equivalency determination prior to the promulgation of the NESHAP.

We recommend that the U.S. EPA provide a simple and expeditious process for allowing existing S/L control requirements and associated monitoring, recordkeeping, and reporting requirements to continue to be implemented for the period of time necessary to prepare an equivalency demonstration and obtain U.S. EPA approval.

4. Include a process to simply incorporate minor, nonsubstantive changes.

In many cases, a S/L agency may choose to slightly modify the NESHAP to reflect S/L formatting or procedural considerations. Currently, Subpart E does not provide an efficient process to simply and quickly approve S/L rules and requirements that have minor, nonsubstantive differences (editorial, formatting, clarifications) from the NESHAP or an approved alternative NESHAP. We recommend that the U.S. EPA include such a process in Subpart E.

5. Delegate the authority to change recordkeeping and reporting requirements.

To manage the program on a day-to-day basis, S/L agencies need the ability to expeditiously make source-specific changes to implement more stringent or different, but equally effective, recordkeeping and reporting requirements. Section 63.91(e) significantly restricts this ability by requiring U.S. EPA approval of all source-specific recordkeeping or reporting changes prior to implementing the change. These changes have little effect on the emission reductions or enforceability of the requirements, yet require substantial S/L agency and U.S. EPA resources to seek and obtain approval.

The U.S. EPA already has resource constraints associated with reviewing S/L rules submitted for inclusion in the State Implementation Plan. Therefore, it seems reasonable to use limited resources efficiently and effectively and delegate authorities to make recordkeeping and reporting changes where there are no significant impacts on the emission reductions or enforceability of the alternative S/L requirements. Therefore, we recommend that the U.S. EPA significantly modify section 63.91 by eliminating the requirement that all recordkeeping and reporting changes must have U.S. EPA approval prior to implementation.

6. Differentiate between work practice standards and work practice requirements.

Work practice standards include a broad array of requirements and are treated in the equivalency process the same as emission limitations. In essence, this means that any change to a work practice standard must be approved by the U.S. EPA and published in the *Federal Register* prior to implementation, even on a source-by-source basis.

However, in many cases, the emission reductions associated with work practice standards cannot be quantified.

Therefore, we recommend that Subpart E and Subpart A clearly differentiate between, and establish different approval criteria for, work practice standards and work practice requirements. We recommend that work practice standards include capture and control efficiency, mass of pollutant/time, mass of pollutant/volume, process weight rate, destruction efficiency, opacity, or other requirements for which emission reductions have been quantified in the development of the NESHAP. We recommend that work practice requirements include operational, inspection, and maintenance requirements, plans, and other requirements for which emission reductions have not been quantified in the development of the NESHAP.

7. Recognize and accommodate risk-based programs.

Subpart E does not recognize and accommodate California's substantial investment in a risk-based program. Elements of this program include the identification of toxic air contaminants, preparation of a health risk assessment and determination of health risk values for toxic air contaminants, development and use of site-specific risk assessment methodologies, and implementation of risk reduction programs. In these program elements, there may be significant differences in comparing these elements of the California and federal programs. For example, the ARB may identify toxic air contaminants that are not included in the U.S. EPA list of hazardous air pollutants, unit risk values for certain compounds may differ based on independent or more recent health risk assessments, or site-specific and standardized risk assessment methodologies may be used in California that differ from U.S. EPA methodologies. While we encourage and are actively seeking harmonization of our programs with U.S. EPA, there is likely to ultimately be differences.

Therefore, we recommend that Subpart E recognize and accommodate S/L agencies that have an extensive risk-based program. These S/L agencies need the flexibility to obtain approval for these alternative program elements in order to effectively integrate the residual risk program (section 112(f)) and the urban area source program (section 112(k)).

8. Develop equivalency options for regulations developed under other authorities.

Currently, Subpart E only provides authority to S/L agencies to demonstrate equivalency for federal standards controlling hazardous air pollutants emissions developed under section 112(d), 112(f), and 112(h). We recommend that the U.S. EPA seek and implement equivalency options for all parts of section 112, section 111/112, section 129, and section 183.

9. Clarify in the Preamble that U.S. EPA must participate in the S/L process prior to submittal of an equivalency package.

In the Preamble, the U.S. EPA identifies that a rule or requirement must be enforceable at the state or local level before an equivalency package can be submitted and reviewed. In practice, there needs to be a process whereby the U.S. EPA reviews and comments on the requirements prior to formal adoption by the S/L agency. Such a process would provide the S/L agency a reasonable assurance that the proposed rule is likely to be approved by U.S. EPA before undertaking a resource intensive and costly rulemaking process. Therefore, we recommend that the Preamble clearly identify that it is important for the U.S. EPA to provide input on the equivalency package prior to formal adoption and submittal.

10. Limit guidance to significant issues.

The U.S. EPA has requested comments on the type of guidance that would be most helpful and whether additional guidance is necessary to implement the approach for determining equivalency for alternative work practice standards. In general, we prefer that the U.S. EPA provide guidance only where there are particularly significant issues related to national consistency. In the vast majority of cases, we believe that the Regional Offices should be given the flexibility to implement the programs in the most effective manner for their Regions.

11. Provide broad flexibility to use enforceable authorities.

The U.S. EPA has requested comments on whether the authorities that a S/L agency may substitute for section 112 rules under section 63.93 are reasonable. In addition, the U.S. EPA requested examples of "enforceable authorities or other requirements" that could be submitted for approval besides state rules and permitting programs.

We recommend that section 63.93, as well as sections 63.92, 63.94, and 63.97, allow other enforceable authorities including permit templates, Part 70 permits, S/L agency operating permits for area sources, board orders, executive orders, compliance orders, court orders, or other types of enforceable mechanisms allowed by state law. Without all of these options, the equivalency process does not address the practical issues associated with trying to integrate the different regulatory approaches among the S/L agencies and U.S. EPA. Section 112(l) specifically provides for these other enforceable mechanisms by using the term "program" rather than the term "rule."

12. Establish simple criteria for determining if an enforceable S/L mechanism is acceptable.

The U.S. EPA has requested comments on what criteria should an enforceable S/L requirement satisfy to be acceptable. The U.S. EPA stated in the Preamble that "At a minimum, the enforceable S/L mechanisms must cover the sources in the source category, the individual HAPs, and there must be authority and resources to implement

and enforce the requirements. These criteria are satisfied by the §63.91(b) component of the up-front approval." The U.S. EPA is also requesting comments on whether there are any other specific approval criteria that should be established.

In general, an enforceable S/L agency mechanism must satisfy the following criteria:

- (1) The S/L agency must have general authorities to regulate sources of hazardous air pollutants;
- (2) The S/L agency must have the authority (via federal, state, or local law) to establish requirements necessary to carry out these authorities; and
- (3) The S/L agency must have the authority to enforce established requirements.

13. Provide a general framework for developing and reviewing equivalency submittals.

The U.S. EPA has requested comments on how the U.S. EPA can make the criteria for developing and reviewing equivalency determinations more precise in recognition of the fact that the equivalency determination is not an exact science.

The scope of the federal air toxics program, coupled with the variability in S/L programs, makes the development of precise criteria that are generally applicable in all situations virtually impossible. However, the U.S. EPA can provide a general framework for developing and reviewing equivalency determinations and empower the Regional Offices to implement the program in a manner most effective for their Region. This approach is more practical and reflective of how the program is actually implemented.

14. Encourage public notice and comment.

The U.S. EPA has requested comments on whether the public within a S/L jurisdiction should have adequate notice and opportunity to submit written comment to the S/L agency during the development of the enforceable terms and conditions that become the approved alternative requirements.

We support public notice and comment as part of the development of enforceable terms and conditions. However, requiring notice and comment rulemaking and final notice rulemaking with two Federal Register publications for every equivalency request is impractical and duplicative of S/L agency rulemaking.

15. Encourage the use of compliance evaluation studies.

The U.S. EPA has requested comments on whether the approach outlined for using compliance evaluation studies is reasonable. In addition, the U.S. EPA has requested comments on whether compliance evaluations studies should be allowed in equivalency demonstrations, and specifically whether the compliance evaluation study approach for alternative compliance and enforcement measures can be implemented effectively for the equivalency-by-permit option.

As discussed in the Preamble, various California stakeholders have been working with the U.S. EPA on a number of initiatives designed to find solutions to the integration of the federal air toxics program with California's air pollution control program. One of the initiatives involved the concept of a compliance evaluation study. In concept, a compliance evaluation study would be used as a possible "tie-breaker" where agreement could not be reached on alternative compliance and enforcement requirements. Unfortunately, no agreement was reached on the value of such a study and the concept was not fully developed.

The approach to using compliance evaluation studies outlined in the Preamble is not reasonable as it would require that compliance evaluation studies be conducted "every year or two in perpetuity." In addition, the value of the compliance evaluation studies appears to be limited; thus, the cost and resources associated with performing these studies does not appear to be justified relative to its benefits in the equivalency process.

We continue to believe that this compliance study approach has significant merit for everyone. However, for this approach to be useful, the S/L agencies would need broader flexibility to propose alternative work practice and monitoring, recordkeeping, and reporting requirements than U.S. EPA is proposing. In addition, we see no reason why the compliance evaluation study approach would not be useful in the equivalency-by-permit option.

16. Encourage the use of field inspections.

The U.S. EPA requested comments on whether the U.S. EPA should allow frequent inspection programs to substitute for some compliance and enforcement measures.

On-site inspection of a regulated facility is part of an effective air pollution control program. We recommend that the equivalency process encourage and promote the use of frequent field inspections as effective ways of ensuring ongoing compliance.

17. Streamline the review process for the General Provisions.

The U.S. EPA is requesting comments on whether there are ways to streamline the review process for alternative General Provisions requirements while ensuring that U.S. EPA receive sufficient information to conduct a review.

The General Provisions tend to be administrative in nature and are not critical to emission reductions. In our experience with two equivalency submittals, we have found that the General Provision requirements usually are limited to two or three actual requirements that must be brought forward into the substituting regulation.

The U.S. EPA could expedite their review if they could limit the General Provisions to the absolute essential requirements. The U.S. EPA seems to have a start at doing so in the Examples of Guidance: General Provisions Equivalency Criteria. No source should operate in violation of the emission reduction requirements. Most substitute rules, by

their very existence, preclude allowing that type of violation. The General Provisions have a preconstruction review element that much be either part of the substitute rule or the S/L program. In section 63.7 of the General Provisions, sources are required to demonstrate compliance within 180 days and performance test records must be kept for five years.

II. Section-by-Section Comments

Section 63.90 Program Overview

General Comments

None

Specific Comments

1. **Section 63.90(a)--Revise the definition of "Alternative Requirements."**

The U.S. EPA has requested comment on whether the definition for "alternative requirements" is useful and complete. As currently written, the definition is very specific and may exclude current or future section 112 requirements that may not clearly fall under one of the listed areas. As such, the definition is not useful in integrating federal and S/L requirements and may be an obstacle in the future. We recommend the following definition.

Alternative requirements means requirements, provisions, or methods that a State submits for approval under 40 CFR Part 63, Subpart E or Subpart A and, after approval, replaces the otherwise applicable Federal section 112 requirements, provisions, or methods.

2. **Section 63.90(a)--Revise the definition of "Compliance and Enforcement."**

The definition does not include several types of requirements found in NESHAPs that are appropriately considered compliance and enforcement measures, such as work practice requirements (including inspection, maintenance, and operational requirements), most pollution prevention requirements, plans, and noticing requirements. Further, the statement "... within a rule ... mechanism. ..." is unnecessary. We recommend the following definition.

Compliance and enforcement measures means requirements ~~within a rule, program, permit, or other enforceable mechanism~~ relating to compliance and enforcement, including but not necessarily limited to monitoring methods and procedures, recordkeeping, reporting, ~~compliance plans, inspection, maintenance, and operational requirements, pollution prevention requirements, noticing, field inspections, entry, sampling, or accidental release prevention oversight.~~

3. **Section 63.90(a)--Remove the definitions of "Intermediate Change to Monitoring" and "Intermediate Change to Test Method."**

We support the concept of delegating authority to S/L agencies for intermediate changes in monitoring and tests methods. However, we recommend that these definitions be removed from this regulation consistent with our recommendation to remove

section 63.91(e), as proposed, in Subpart E. In addition, these definitions are restrictive for existing programs that have extensive expertise and experience with monitoring and test method development.

4. Section 63.90(a)--Revise the definition of "Level of Control."

As currently written, the definition has resulted in many requirements that are actually "compliance and enforcement measures" being considered as "level of control" requirements for the purpose of equivalency. This has occurred because U.S. EPA staff has interpreted work practice standards to include inspection, maintenance, operational, pollution prevention, noticing, and plan requirements. The level of control requirements should include capture and control efficiency, mass of pollutant/time, mass of pollutant/volume, process weight rate, destruction efficiency, opacity, or other requirements for which emission reductions have been quantified in the development of the NESHAP. The criteria for approving an alternative to a level of control requirement should be that the alternative provides an equivalent or better emission reduction compared to the NESHAP requirement.

We recommend that inspection, maintenance, operational, pollution prevention, noticing, and plan requirements not be treated as level of control requirements. As stated in the Preamble, it is generally not possible to quantify the emission reductions associated with these requirements. It is also not possible in the development of the NESHAP to examine the full array of equally effective compliance and enforcement approaches. Further, inspection, maintenance and operational requirements, and particularly plans, are likely to change much more frequently than emission limitations. All of these factors support not including these types of requirements in the definition of level of control. We recommend the following definition.

Level of control means the degree to which a ~~rule, program, or requirement requires a source to~~ limits emissions or ~~to~~ employs design, equipment, quantifiable work practice standards, ~~operational~~, accident prevention, or other ~~requirements or techniques~~ (including a prohibition of emissions) for:

- (1)(i) each hazardous air pollutant, if individual pollutants are subject to emission limitations, and*
- (ii) the aggregate total of hazardous air pollutants, if the aggregate grouping is subject to emission limitations; and*
- (2) each substance regulated under section 112(r).*

5. Section 63.90(a)--Remove the definitions of "Minor Change to Monitoring" and "Minor Change to Test Method."

We support the concept of delegating authority to S/L agencies for minor changes in monitoring and tests methods. However, we recommend that these definitions be removed from this section consistent with our recommendation to delete section 63.91(e), as proposed. These definitions are overly restrictive for existing programs that have extensive expertise and experience with monitoring and test method development.

Further, the prescriptive nature of the definition (i.e. "Has no national significance") may significantly restrict the ability of S/L agencies to use these provisions.

6. Section 63.90(a)--Retain the definition of "partial approval."

The U.S. EPA requested comments on whether the definition for partial approval was helpful and whether the approach for partial approval was reasonable. We believe that the Administrator has always had the option of approving or disapproving an equivalency submittal in whole or in part. The definition for "partial approval" and mentioning "partial approval" in the definition of "approval" seem to clarify that this is so. The approach to approve an equivalent rule only partially if a separable portion of the rule or program fails to meet the required criteria seems reasonable. We do caution the U.S. EPA that the partial approval option should only be used where a specific provision clearly is unacceptable and not otherwise addressed through a comprehensive evaluation of all applicable requirements.

6. Section 63.90(a)--Revise the definition of "Program."

The definition of "program" unnecessarily refers to only certain sections in Subpart E. There are many sections in Subpart E and Subpart A that could be efficiently and effectively implemented via a "program." We recommend the definition of program exclude the reference to certain sections and, instead, refer to "... authorities, resources, and other requirements that satisfy the criteria of this Subpart or Part 63, Subpart A.

7. Section 63.90(e)--Clarify the federal enforceability of alternative requirements.

We recommend that section 63.90(e) clarify that there will be situations where the requirements resulting from a S/L supporting program or rule, and not the entire program or rule, become federally enforceable. For example, if a S/L agency seeks equivalency for an alternative emission limitation derived from a S/L new source review rule, it is the alternative emission limitation that becomes federally enforceable (through the Subpart E equivalency process), not the S/L new source review rule.

Section 63.91 Criteria Common to All Approval Options

General Comments

1. Separate the delegation process from the equivalency process.

We recommend that Subpart E clearly separate the requirements for straight delegation of unchanged Federal standards from the requirements for equivalency. Section 63.91 should be a stand alone section containing the requirements for delegating and withdrawing delegation of unchanged Federal standards. The remaining sections should deal with processes for establishing equivalent alternative requirements. The mixing of delegation and equivalency requirements has caused considerable confusion and resulted in unnecessary delays in delegation of NESHAP requirements.

We recommend that section 63.91 be restructured so that once a S/L agency has received delegation, any of the equivalency options identified in sections 63.92, 63.93, 63.94, 63.95, and 63.97 would become automatically available to the agency receiving delegation. For example, we recommend that the up-front approval requirements related to identifying the section 112 standards for which equivalency may or will be used (see sections 63.94 and 63.97) be automatically provided under section 63.91.

2. Establish separate delegation requirements for major and area source requirements.

We recommend that section 63.91 have separate requirements for delegating authorities for major sources and for area (non-major) sources. For delegation of requirements affecting major sources, a simple process (a letter requesting delegation of current and future standards), limited approval criteria (where there is an approved Part 70 program), and an expeditious approval timeframe (30 days) should be established. This simple delegation process is appropriate since Part 70 program approval should be sufficient for receiving delegation of major source requirements.

The delegation process, approval criteria, and timeframe for delegation of area source authorities may be slightly more involved because area sources are generally not covered under Part 70 program approval. However, an expeditious process for delegation of area source requirements is needed because, in most cases, S/L agencies are better equipped to implement and enforce area source NESHAPs compared to most U.S. EPA Regional Offices. We recommend that the process be straightforward, the approval criteria focus on demonstration of authority and resources (compared to those available at the U.S. EPA Regional Office to implement and enforce the area source requirements), and the approval timeframe be expeditious (60 days).

California already has received U.S. EPA approval relative to authority and resources to implement all section 112 requirements, with the exception of section 112(r). Therefore, we recommend that section 63.91 recognize and accommodate any prior approvals from the U.S. EPA so that a redundant submittal, review, and approval process is not required.

3. Include the requirements for withdrawing delegation into section 63.91.

We recommend that the process for withdrawing delegation of unchanged Federal standards, currently contained in section 63.96, be incorporated into section 63.91.

Specific Comments:

1. Section 63.91(a)--Establish a more expeditious approval timeframe.

The timeframe for U.S. EPA approval of unchanged Federal standards in section 63.91(a) is too long. Allowing up to 210 days for U.S. EPA actions is not appropriate given the level of complexity of the analysis required. Approval timeframes of 30 days for major source delegation, and 60 days for area source delegation, is achievable.

2. Section 63.91(a)--Remove duplicate sentence.

The following sentence appears twice in section 63.91(a). "This includes State requests for up-front approval of their mechanism for taking delegation of future unchanged Federal section 112 standards and requirements as well as approval to implement and enforce unchanged Federal section 112 standards and requirements on a rule-by-rule basis."

3. Section 63.91(b)(6)--Support the deletion of redundant language in §63.91(b)(6) that requires applicants to satisfy the criteria in §63.91(b)(1)(i)-(iv).

We support deleting the duplicate language as a step towards simpler, shorter, and easier to read regulations.

4. Section 63.91(c)(3)(i)--Revise the section to provide realistic alternatives for addressing amendments to the NESHAPs.

The U.S. EPA has requested comments on whether it is reasonable to require a S/L agency to submit a revised equivalency demonstration within 90 days after the promulgation of amendments to a NESHAP and whether the submittal should be subject to the same review procedures as the initial submittal. In addition, the U.S. EPA requested comments on whether there is a need for U.S. EPA to notify those who have submitted an equivalent standard of the need to submit a revised equivalency demonstration when U.S. EPA revises a NESHAP.

The approved alternative requirements, in effect, become a NESHAP once the U.S. EPA approves the alternative requirements. Many of the U.S. EPA amendments to date have essentially been relaxations of the original NESHAPs. Consequently, the S/L agency should have broad discretion as to the need to incorporate amendments. A S/L agency with an approved alternative should not, in general, have to implement amendments unless they have completed an independent evaluation of the need to incorporate the amendments into the alternative requirements and completed the appropriate regulatory process to incorporate the provisions into rules or permits. For these cases, we recommend that the U.S. EPA develop a suitable expeditious process for approving the revised S/L requirements.

However, in some cases where there are clear environmental benefits associated with the amendments, we recommend that the U.S. EPA identify the specific need to revise alternative requirements as they promulgate the amendments, notify the appropriate S/L agency of the amendments, and provide sufficient time for the S/L agency to make the necessary regulatory changes and then submit a revised equivalency submittal, if appropriate.

In any case, it is unrealistic to require a S/L agency to submit an equivalency package within 90 days because of the need to take appropriate regulatory action at the S/L level, which typically will take between six months and one year, and the U.S. EPA has already

indicated that an equivalency package cannot be submitted until the S/L requirements are enforceable at the S/L level. We recommend that the U.S. EPA revisit this section and develop a more reasonable mechanism for addressing amendments, preferable one that, in general, does not require an additional Subpart E submittal.

5. Section 63.91(d)--Include the term "requirements."

We recommend that the reference throughout this section to "rule or program" be replaced with "rule, requirement, or program," to be consistent with wording earlier in the section.

6. Section 63.91(e)--Remove the provisions of the July 10, 1998-Seitz memorandum in Subpart E.

We support the delegation of authorities to S/L agencies to assist in the day-to-day management of the program and to effectively and efficiently use limited resources. However, we recommend that the specific provisions contained in the July 10, 1998, John Seitz memorandum concerning the delegation of authorities be deleted. Instead, we recommend that this section indicate that U.S. EPA Regional Offices will be responsible for delegating authorities under the General Provisions consistent with the authorities provided to the U.S. EPA Regional Offices in implementing the NESHAPs and consistent with U.S. EPA guidance.

Section 63.91(e) will significantly restrict S/L agencies' ability to expeditiously make source-specific changes to implement more stringent or different, but equally effective, recordkeeping and reporting requirements. U.S. EPA approval will be required for any source-specific recordkeeping or reporting changes. This will make it less likely that S/L agencies will seek approval for more stringent or equally effective S/L requirements, will adversely impact implementation of the NESHAPs, and will result in an inefficient use of limited resources.

Also, section 63.91(e), as written, has the potential for creating a significant approval workload and potential approval backlog for the U.S. EPA Regional Offices. Further, it will make it difficult to provide greater delegation of recordkeeping and reporting requirements in the future because the delegable authorities are identified in the Subpart E regulations instead of a policy document.

Work practice requirements (including operational, inspection, and maintenance requirements), plans, and many pollution prevention approaches, represent important compliance and enforcement measures. Since it is impossible in the development of the NESHAP to identify the full array of equivalent compliance and enforcement approaches, and since approaches are likely to change as more experience is gained, it is critical that Subpart E provide a simple and expeditious process for approving alternative compliance and enforcement measures. This should include the delegation of authority to S/L agencies to approve source-specific change to compliance and enforcement measures.

7. Section 63.91(e)--If section 63.91(e) is retained, add provisions for a review and approval process for requirements U.S. EPA does not delegate.

If section 63.91(e) is retained similar to what was proposed, we recommend that Subpart E establish an approval process and review timeframe for alternative requirements where U.S. EPA has not delegated the approval authority to the S/L agency. We suggest a maximum approval timeframe of 60 days for alternative requirements under Subpart A, section 63.6(g) [Approval of Alternative Non-Opacity Emission Standards], section 63.6(h)(9) [Approval of Alternative Opacity Standards], and section 63.7(e)(2)(ii) and (f) [Approval of Major Alternative Test Methods].

Alternative requirements under section 63.10(f) entitled "Waiver of Recordkeeping" covers alternatives to recordkeeping and reporting requirements. We recommend that these site-specific alternative requirements be approved within 30 days of submittal to U.S. EPA unless U.S. EPA takes action to disapprove the alternative requirement within the 30-day review window.

Further, we recommend that the U.S. EPA Regional Office be provided the authority to enter into an agreement with a S/L agency for an alternative review and approval process that is most expeditious and efficient for the agencies involved.

8. Section 63.91(e)(1)(i)-Revise the language.

If the language in section 63.91 is not removed, we recommend that the following changes to the language be made.

"...The EPA Regional Office may request to review ~~an opportunity to review~~ any State decision pursuant to the authorities listed in paragraph (e)(1)(ii) of this section.

Section 63.92 Approval of a State Rule that Adjusts a Section 112 Rule

General Comments

1. Allow adjustments by rule; permit, or other enforceable mechanisms, and for major and area sources.

We recommend that this section be revised to allow for approval of equivalent requirements by rules, permits, other enforceable mechanisms, or a combination of rules, permits, and other enforceable mechanisms. Further, these mechanisms should be allowed for major and area sources. Since alternative NESHAP requirements approved under this section must be "unequivocally no less stringent than the otherwise applicable federal rule," it is critical that they are implemented as expeditiously as possible.

Many of the more stringent S/L requirements will result from S/L new source review rules. As such, there is not an emission limitation in a specific rule that can be submitted for equivalency. Instead, a permit condition is used to implement the more stringent

requirements. If section 63.92 does not allow for approval of alternative requirements by permit, the only equivalency options available will be section 63.94 or section 63.97. Both of these sections require a more complicated and lengthy equivalency process. Section 63.94 contains an additional restriction that it can only be used five times per source category. Using either of these sections will result in significant delays in implementing more stringent requirements and result in an inefficient use of limited resources.

Specific Comments

1. Section 63.92 (a)(3)--Provide an expeditious approval process.

We recommend that the timeframe for action be reduced to 45 days from receiving a request. A 45-day approval period is an appropriate length of time to evaluate requests under this section. Given the environmental benefits associated with these changes, they should be processed as quickly as possible. If the information provided is not sufficient to make a determination that the alternative is "unequivocally no less stringent," the request should be denied. If the request is not complete, it should be denied or withdrawn.

2. Section 63.92 (b)(3)--Expand the list of state adjustments.

We recommend that the list of state adjustments be expanded to include:

- more stringent emission control requirements (and associated monitoring, recordkeeping, and reporting) resulting from S/L authorities (i.e., new source review rules, toxics emissions notification requirements, risk reduction audit and plan requirements, etc.);
- minor, nonsubstantive differences (editorial, formatting, clarifications) from the NESHAP or approved alternative requirements;
- alternative requirements previously approved by the U.S. EPA Regional Office for use by another S/L agency in the Region; and
- source-specific adjustments to compliance and enforcement measures.

Without the first recommended change, there will be a significant loss of toxics emission reductions because of the strong disincentive (detailed equivalency submittals and approval timeframes) of going beyond NESHAP requirements. We will also lose the emission control technology advancements that have been fueled by existing S/L new source review programs. Without the second and third recommended changes, limited resources will be spent without environmental benefits. Without the fourth recommended change, there will not be a simple and expeditious process for approving more stringent and more effective compliance and enforcement measures.

Section 63.93 Approval of State Authorities that Substitute for a Section 112 Rule

General Comments

None

Specific Comments

1. Section 63.93(a)--Provide a more expeditious approval process.

A 180-day review and approval process is not sufficiently expeditious.

We recommend a maximum of 90 days for review and approval. As we saw in the *Sacramento Protocol* work, ARB's Chrome Plating equivalency submittal, and ARB's Perchloroethylene Dry Cleaning submittal, the substantive review of the requirements occurs during the interactive phase where S/L agency and U.S. EPA staffs compare the requirements of the NESHAP to the S/L requirements. The review of the complete packages should not require extensive time since all of the issues should be fully developed and most of them resolved prior to the submittal of the draft permit terms and conditions. Allowing 180 days for this process will seriously affect the ability to make changes in a reasonable timeframe.

2. Section 63.93(a)(3)--Provide reasons for partial approval as well as for disapproval.

We recommend that the Administrator provide the S/L agency with the basis for the partial approval as well as the disapproval and what actions the S/L can take to make the authorities approvable. We recommend that the language of section 63.93 (a)(3) be revised as follows:

"If the Administrator finds that any of the requirements of this section or §63.91 have not been met, the Administrator will partially approve or disapprove the State authorities. For any partial approvals or disapprovals, the Administrator will provide the State with the basis for the partial approval or disapproval and what actions that State can take to make the authorities approvable."

3. Section 63.93(b)(2)--Establish different approval criteria for level of control requirements and compliance and enforcement measures.

Section 63.93(b)(2) has the same approval criteria for demonstrating equivalency for levels of control requirements as it does for compliance and enforcement measures. The criteria are equivalent emission reductions. We agree that these criteria are appropriate for levels of control requirements such as capture and control efficiency, mass of pollutant/time, mass of pollutant/volume, process weight rate, destruction efficiency, opacity, or other requirements for which emission reductions have been quantified in the development of the NESHAP. However, these criteria are not appropriate, or necessary, for compliance and enforcement measures (inspection, maintenance, operational,

pollution prevention, noticing, and plan requirements), unless the NESHAP specifically identifies a methodology for determining the emission reductions achieved by a particular compliance and enforcement measure.

Generally, it is not possible to quantify the emission reductions associated with compliance and enforcement measures. It is also not possible, in the development of the NESHAP, to examine the full array of equally effective compliance and enforcement approaches. Further, compliance and enforcement measures are likely to change as more experience is gained implementing these measures. Despite these factors, S/L agencies must demonstrate equivalent emission reduction for any alternative. As a result, we have found it difficult to obtain approval to implement compliance and enforcement measures that are different from those in the NESHAP, despite several years of successfully implementing these measures. It has been our experience that more than 90 percent of the time and resources spent in our equivalency efforts has been spent on demonstrating equivalency for alternative compliance and enforcement measures. Whereas, less than 10 percent of the time and resources have been spent demonstrating equivalency for the more critical level of control requirements.

The failure to clearly differentiate between level of control requirements and compliance and enforcement measures, both in terms of defining them and the criteria for demonstrating equivalent alternatives, has created significant delays in gaining approval for alternative compliance and enforcement measures that we know work. It has also resulted in a significant amount of a S/L agency's limited resources being spent on less critical requirements.

We recommend that separate approval criteria be provided for "levels of control" and "compliance and enforcement measures." We recommend that section 63.93(b)(2) and (b)(4) be amended as follows:

(2) Levels of control ~~and compliance and enforcement measures~~ that result in emission reductions from each affected source or accidental release prevention program requirements for each affected source that are no less stringent than would result from the otherwise applicable federal rule;

(4) Compliance and enforcement measures that satisfy the intent of the otherwise applicable federal requirement, are practicably enforceable, and adequate to determine compliance with the emission limitations or standards. At a minimum, the approved State authorities² ~~rules~~ must include the following compliance and enforcement measures.

- (i) The approved authorities must include a method for determining compliance.

² The original language of this section referring to "authorities" should be retained because the specific requirements may be contained in state statute, a rule, or other enforceable authorities.

- (ii) If a standard in the approved authorities rule is not instantaneous, a maximum averaging time must be established.
- (iii) The authorities . . . status. (Retain all current language.)

4. Section 63.93(b)(3)--Provide flexibility in compliance dates for special cases.

The current language in this section requires the compliance timeframe in the alternative state rule to be identical to that in the NESHAP. We agree that this is generally appropriate. However, there are situations where a different compliance date is appropriate. For example, additional time may be needed to implement more stringent controls (California Dry Cleaning Rule); or obtain equivalency for alternative monitoring, recordkeeping and reporting requirements (California Chrome Plating Rule). We recommend that this section be modified as follows to recognize these types of situations:

(3) A compliance schedule that assures that each affected source is in compliance no later than would be required by the otherwise applicable federal rules sufficiently expeditious; and

Section 63.94 Approval of State Permit Terms and Conditions that Substitute for a Section 112 Rule

General Comments

1. Provide for two equivalency review options.

We recommend that section 63.94 provide for two equivalency review options: one for approval of alternative NESHAP requirements outside the Part 70 process, and one for approval of alternative NESHAP requirements as part of the Part 70 process. Under the first option, the alternative requirements would be reviewed and approved as equivalent alternative requirements to the NESHAP. As such, incorporation of these provisions into the Part 70 permit should be no different from incorporating new NESHAP provisions into a Part 70 permit. Under the second option, the S/L agency should be allowed to submit the alternative NESHAP requirements as part of a Part 70 submittal. Under this option a longer review timeframe for U.S. EPA review, compared to the normal Part 70 review timeframe, could be provided under Subpart E.

This two-option approach is essential because, in some cases, the agency seeking approval under the equivalency-by-permit option will not be the permitting agency. For example, the ARB may use the equivalency-by-permit option to develop a permit template. The most efficient process for approving the permit template would allow for public review and U.S. EPA approval prior to the districts in California incorporating the approved permit conditions in the same manner as they would incorporate a promulgated NESHAP. If the agency preparing the equivalency submittal is also the permitting agency, seeking approval as part of the Part 70 process may be more expeditious.

2. Allow for Title V permits and S/L operating permits for area sources.

We recommend that section 63.94 allow the use of either Title V permits, S/L operating permits, or S/L permit templates for equivalency under this section. It is inappropriate to limit equivalency under this section to sources permitted under part 70 or part 71 only.

3. Allow equivalency determinations for all 112 sections.

Section 63.94 is limited to allowing equivalency for section 112(d) -- MACT standards, section 112(f) -- residual risk standards, and section 112(h) -- work practice standards. This does not represent the full complement of potential section 112 standards. For example, new requirements are likely under section 112(k) --Urban Area Source Program. Limiting equivalency to only certain sections of 112 is not consistent with section 112(l). We recommend that this section be revised to allow equivalency for all section 112 requirements. We recommend the following change to the introductory paragraph of section 63.94.

"Under this section a State may seek approval of a State program to be implemented and enforced in lieu of specified existing and future Federal emission standards or requirements promulgated under section 112 (d), ~~Section 112(f) or section 112(h), for those affected sources permitted by the State under part 70 or part 71 of this chapter.~~"

Similar language changes are necessary throughout section 63.94 to be consistent with this change.

Specific Comments

1. Section 63.94(a) and (b)--Remove the requirement for upfront approval.

The upfront approval requirements identified in sections 63.94(a) and (b) are unnecessary and impractical. Rather than requiring the S/L agency to identify existing or future NESHAPs to be replaced, we recommend that the U.S. EPA, by this rulemaking, make it clear that equivalency-by-permit option is available to any S/L agency for those source categories for which they have delegation. We do not believe it is necessary, nor possible where there are future standards, to identify the specific sources for which the S/L is seeking equivalency-by-permit. Further, the section 63.93 process does not require a similar identification of specific sources.

2. Section 63.94(b)(1)(i)--Remove the requirement that the equivalency-by-permit option be limited to five sources in a source category.

The U.S. EPA's proposal to limit equivalency-by-permit to five sources in a source category is arbitrary and not appropriate. Given the prescriptive nature of the NESHAPs,

we are finding that case-by-case adjustments are needed. The equivalency-by-permit option has the potential to provide these case-by-case adjustments for many sources. Limiting this option to only five sources per source category seriously jeopardizes the usefulness of this option and severely limits the flexibility that S/L agencies have in establishing alternative requirements. Further, the five source limit will be particularly restrictive for NESHAPs that cover multiple source categories, such as the internal combustion engine NESHAP or MON (miscellaneous organic NESHAP).

The decision concerning what equivalency approach and how often it should be used should reside with the S/L agency, or with the S/L agency in consultation with the Regional Office. One option might be to delegate the authority for the Regional Office to negotiate directly with the S/L agency on the number of affected sources that can be included in the equivalency-by-permit option. If the administrative burden associated with reviewing equivalency requests becomes too great on U.S. EPA, several options exist including greater delegation of authorities to S/L agencies or revision to the rule development process to reduce the need for alternative requirements. In any case, delegation is not a surrender of responsibility and U.S. EPA retains its oversight authority.

3. Section 63.94(b)(1)(ii)--Remove the requirement that a S/L agency must take delegation for all sources in a source category.

If the S/L agency decides to implement alternative requirements for a source via a Part 70 permit, section 63.94(b)(1)(ii) requires that the S/L agency take delegation for all sources in the source category. This requirement could conflict with authority and resource requirements in section 63.91. If a S/L agency has the resources to address only a limited number of sources, this provision would effectively preclude them from being able to use this option. Therefore, we recommend that the U.S. EPA remove the requirement that a S/L agency be required to take delegation for all sources in a source category as a condition of using 63.94.

4. Section 63.94(c)--Require draft permit conditions for only the alternative requirements.

Section 63.94(c) requires that the S/L agency, wishing to obtain equivalency for their rules or permit conditions, submit "draft permit terms and conditions to allow the Administrator to determine equivalency." Section 63.94(c) specifies that "the permit terms and conditions shall reflect all of the requirements of the otherwise applicable Federal section 112 emission standard(s) including any alternative requirements that the State is seeking to implement and enforce."

A more reasonable approach is to require only those permit conditions that are alternative requirements to the Federal section 112 requirement to be submitted for equivalency

review. This will substantially reduce the workload for both the U.S. EPA and S/L agencies. Therefore, we recommend that the equivalency process focus on approval of alternative requirements; the Part 70 process focus on approval of permits reflecting both alternative and NESHAP requirements; and section 63.94(c) require draft permit conditions only for those alternative NESHAP requirements for which the S/L agency is seeking equivalency.

5. Section 63.94(c)--Reduce the review period for alternative requirements.

We recommend that the U.S. EPA specify a 60-day review timeframe, based on our involvement in reviewing alternative requirements for the *Sacramento Protocol*. The *Sacramento Protocol* effort indicated to us that the substantive review of the requirements occurs during the interactive phase where S/L agency and U.S. EPA staffs compare the requirements of the NESHAP to the S/L requirements. The review of the complete packages should not require extensive time since all of the issues should be fully developed and most of them resolved prior to the submittal of the draft permit terms and conditions. Allowing 90 days during this phase of the process will seriously affect our ability to make changes in a reasonable timeframe. The 90-day timeframe is appropriate only if U.S. EPA rulemaking and public comment is included.

Section 63.97 Approval of a State Program that Substitutes for Section 112 Requirements

General Comments:

1. Expand the state program approval option to include all options.

The U.S. EPA has requested comments on whether it is a reasonable approach to allow the state program approval (SPA) process to apply to either major or area sources (or both) and to submit more than one mechanism (permits, rule, requirement, template, etc.) for each source category to ensure that all of the applicable requirements are addressed. In addition, the U.S. EPA has requested comments on whether the substitution of requirements should be applied on a source category basis.

The SPA process for either major or area sources, or both, with a combination of mechanisms is reasonable. As currently proposed, section 63.97 is intended to rely on a source category-by-source category equivalency approval process. The S/L agencies would be more likely to use this option if it reflected the actual approaches typically used in practice. These approaches use rules, permits, and other enforceable requirements, typically on a source-by-source basis. Therefore, we recommend that the SPA option mirror this approach.

We also recommend that the SPA option provide for the approval of risk-based programs. These programs include the identification of toxic air contaminants, preparation of a

health risk assessment and determination of health risk values for toxic air contaminants, development and use of site-specific risk assessment methodologies, and implementation of risk reduction programs. Such programs will become particularly important as the residual risk and urban area source programs develop.

2. Allow equivalency determinations for all hazardous air pollutant standards and requirements.

Section 63.97 limits the equivalency process to section 112(d) MACT standards, section 112(f) residual risk standards, and section 112(h) work practice standards. In meeting the statutory requirements of section 112(l), we recommend that this section allow for approval of alternative requirements for any federal standards controlling hazardous air pollutant emissions developed under section 112 (including section 112(k) and combination section 111/section 112), section 129, and section 183.

Specific Comments

1. Section 63.97(b)(1)--Address the upfront approval requirements as part of the delegation process.

We recommend that S/L agencies not be required to specifically identify in advance the source categories and/or section 112 requirements for which they intend to substitute alternative requirements, unless this can be done on a general basis (that is, all section 112(d) standards, all section 112 requirements with the exception of section 112(r), etc.). The provision to require the identification of specific source categories is unnecessary provided the public has an opportunity to comment on the specific alternatives developed under the approved program. The opportunity for public comment is appropriate and necessary for alternatives developed under an approved process.

2. Section 63.97(b)(2)(i)--Remove the requirement for repeating the approval process.

Section 63.97 (b)(2)(i) requires the State to repeat the approval process specified in paragraph (a) of 63.97 to extend the applicability of approved generic alternative requirements to additional source categories. Once approved, a generic alternative requirement should be applicable to all related source categories. If the generic alternative requirement is not reasonable for a future applicable source category, the S/L agency can specify that the generic alternative requirement is not applicable in the specific rule, permit, or other enforceable mechanism. If the alternative requirement is no longer acceptable to U.S. EPA, then the U.S. EPA can initiate withdrawal procedures.

3. Section 63.97(b)(2)(ii)--Address the authorities/mechanisms for implementing alternative requirements for area sources in the delegation process (section 63.91).

Section 63.97(b)(2)(ii) requires a description of the mechanism(s) that will be enforceable as a matter of State law and that the State will use to implement and enforce alternative requirements for area sources. This provision is more appropriately addressed in the delegation process (section 63.91).

III. Comments Applicable to Part 70

We recommend that changes be made to Part 70 to ensure the expeditious implementation of alternative requirements approved under Subpart E, or approved under Subpart A via delegation under Subpart E.

For sources with an approved Part 70 permit which addresses the applicable federal NESHAP(s), we recommend that alternative requirements approved under sections 63.91 (Subpart A delegation), 63.92, 63.93, 63.94, or 63.97, using the permit or permit template equivalency mechanism, be incorporated into the Part 70 permit as an administrative amendment.

For sources with an approved Part 70 permit which addresses the applicable federal NESHAP(s), we recommend that alternative requirements approved under sections 63.91 (Subpart A delegation), 63.92, 63.93, or 63.97, using the rule equivalency mechanism, be incorporated into the Part 70 permit as a minor amendment.

For sources without an approved Part 70 permit, we recommend that alternative requirements approved under sections 63.91 (Subpart A delegation), 63.92, 63.93, 63.94, or 63.97, be incorporated into the Part 70 permit as would any other federal NESHAP requirement. However, it needs to be made clear that the review and approval of the alternative NESHAP requirement is limited to whether or not the permit condition accurately reflects the alternative requirement approved under Subpart E.